No. 92-1953

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

FREDERIC J. RAYMOND, *et al.*,

Petitioners,

—v.—

MOBIL OIL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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July 9, 1993

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

COUNTERSTATEMENT OF THE CASE 2

A. Factual Background 3

B. The Tenth Circuit's Decision in *Mitchell v. Mobil Oil Corp* 5

C. The Fifth Circuit's Decision in *Christopher v. Mobil Oil Corp* 6

D. The Present Class Action: *Raymond v. Mobil Oil Corp* 7

ARGUMENT 8

I. The Tenth Circuit Correctly Applied this Court's *Firestone* Test to the Undisputed Facts of this Case . 8

A. The *Firestone* Test 8

B. The Tenth Circuit's Application of the *Firestone* Test 10

II. The Tenth Circuit's Decision Is Fully Consistent with ERISA § 510 12

III. ERISA Standing Is Determined at the Time the Lawsuit Is Filed 16

IV. The Decision Below Does Not Raise the Question Whether Equitable Relief Is Available in ERISA § 510 Actions 18

CONCLUSION 19

APPENDIX

Listing Pursuant to Sup. Ct. R. 29.1 ..... 1a

TABLE OF AUTHORITIES

Cases PAGE

Alexander v. Anheuser-Busch Cos., 990 F.2d 536 (10th Cir. 1993) 17

Blackmar v. Lichtenstein, 603 F.2d 1306 (8th Cir. 1979) .. 17

Blessitt v. Retirement Plan for Employees of Dixie Engine Co., 848 F.2d 1164 (11th Cir. 1988) 13

Buchanan v. J.R. Foster Elec. Co., No. 89 C 4711, 1989 WL 157340 (N.D. Ill. Dec. 20, 1989) 11

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 11

Chemung Canal Trust Co. v. Sovran Bank/Maryland, 939 F.2d 12 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 3014 (1992)..... 17

Christopher v. Mobil Oil Corp., 950 F.2d 1209 (5th Cir.), *cert. denied*, 113 S. Ct. 68 (1992) 1, 3-4, 6-7, 11-12

Conkwright v. Westinghouse Elec. Corp., 933 F.2d 231 (4th Cir. 1991).....14-15

Craig v. Bemis Co., 517 F.2d 677 (5th Cir. 1975)..... 5

Deller v. Portland Gen. Elec. Co., 727 F. Supp. 1369 (D. Or. 1989) 11

Delta Air Lines, Inc. v. August, 450 U.S. 346 (1981) 18

Drennan v. General Motors Corp., 977 F.2d 246 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 2416 (1993)..17-18

Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989) .....*passim*

Framingham Union Hosp., Inc. v. Travelers Ins. Co., 721 F. Supp. 1478 (D. Mass. 1989) 17

PAGE

Gwaltney v. Chesapeake Bay Found., 484 U.S. 49 (1987) 16

Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990) 12, 14

Joseph v. New Orleans Elec. Pension & Retirement Plan, 754 F.2d 628 (5th Cir.), *cert. denied*, 474 U.S. 1006 (1985) 10

Kuntz v. Reese, 785 F.2d 1410 (9th Cir.) (per curiam), *cert. denied*, 479 U.S. 916 (1986) 9, 10, 17

Lujan v. Defenders of Wildlife, 112 S. Ct. 2130 (1992) .. 16

Mead Corp. v. Tilley, 490 U.S. 714 (1989) 10

Mertens v. Hewitt, 113 S. Ct. 2063 (1993) 18

Mitchell v. Mobil Oil Corp., 896 F.2d 463 (10th Cir.), *cert. denied*, 498 U.S. 898 (1990), ... *passim*

Mitchell v. Mobil Oil Corp., 944 F.2d 911 (10th Cir. 1991) (table), *cert. denied*, 112 S. Ct. 1477 (1992). 6

Morales v. Pan American Life Ins. Co., 914 F.2d 83 (5th Cir. 1990) 5

Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709 (9th Cir. 1990) 10, 17

Patrick v. Burget, 486 U.S. 94 (1988) 18

Patterson v. Shumate, 112 S. Ct. 2242 (1992) 13

Reklau v. Merchants Nat'l Corp., 808 F.2d 628 (7th Cir. 1986), *cert. denied*, 481 U.S. 1049 (1987) 5

Rhee v. Witco Corp., 762 F. Supp. 211 (N.D. Ill. 1991) 11, 13, 17

PAGE

Saladino v. ILGWU Nat'l Retirement Fund, 754 F.2d 473 (2d Cir. 1985).....9, 17

Sallee v. Rexnord Corp., 985 F.2d 927 (7th Cir. 1993)... 17

Sanson v. General Motors Corp., 966 F.2d 618 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 1578 (1993)..... 17

Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan, 883 F.2d 345 (5th Cir. 1989)..... 10

Teagardener v. Republic-Franklin Inc. Pension Plan, 909 F.2d 947 (6th Cir. 1990), *cert. denied*, 489 U.S. 1027 (1991)..... 10

Tolle v. Carroll Touch, Inc., 977 F.2d 1129 (7th Cir. 1992)..... 15

Werner v. Morgan Equip. Co., No.C-92-03930-JPV, 1992 WL 453355 (N.D. Cal. Aug. 5, 1992) 17

West v. Butler, 621 F.2d 240 (6th Cir. 1980) 14

West v. Greyhound Corp., 813 F.2d 951 (9th Cir. 1987)... 13

Winchester v. Pension Comm. of Michael Reese Health Plan, Inc., 765 F. Supp. 424 (N.D. Ill. 1990), *aff'd*, 942 F.2d 1190 (7th Cir. 1991).....11, 17

Yancy v. American Petrofina, Inc., 768 F.2d 707 (5th Cir. 1985) 10, 17

Zydel v. Dresser Indus., Inc., 764 F. Supp. 277 (W.D.N.Y. 1991)..... 11

Statutes, Rules and Regulations

26 U.S.C. § 401(a)(4)..... 4

28 U.S.C. § 1292(b) 7, 8

PAGE

ERISA § 3(6), 29 U.S.C. § 1002(6) 16

ERISA § 3(7), 29 U.S.C. § 1002(7) 2, 9, 14, 16

ERISA § 501, 29 U.S.C. § 1131 15

ERISA § 502, 29 U.S.C. § 1132.....9, 14, 16

ERISA § 502(a), 29 U.S.C. § 1132(a).....9, 14, 16

ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).....16, 18

ERISA § 502(a)(3)(B), 29 U.S.C. § 1132(a)(3)(B)..... 18

ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5)..... 15

ERISA § 504, 29 U.S.C. § 1134 15

ERISA § 510, 29 U.S.C. § 1140 .....2, 7, 11-15, 18

ERISA § 511, 29 U.S.C. § 1141 15

Retirement Equity Act of 1984, Pub. L. No. 98-397, § 302(d)(1), 98 Stat. 1452 (1984).....5

Fed. R. Civ. P. 56(e) 11

S. Ct. R. 29.1 1

29 C.F.R. § 2510.3-3(d)(2)(ii)(B) 10

Miscellaneous

Legislative History of the Employee Retirement Income Security Act of 1974 (1976).....14, 15

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Mobil Oil Corporation ("Mobil") respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Tenth Circuit's opinion in this case.[1]

The decision below did no more than explicitly apply this Court's decision in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), to the undisputed facts of this case in a manner consistent with the rulings of other lower federal courts. There is no conflict with the Fifth Circuit's decision in *Christopher v. Mobil Oil Corp.*, 950 F.2d 1209 (5th Cir.), *cert. denied*, 113 S. Ct. 68 (1992), which only allowed plaintiffs who had

[1] A list of Mobil's parent and non-wholly-owned subsidiaries, required by Sup. Ct. R. 29.1, appears in the Appendix.

retired under similar circumstances to replead their Employee Retirement Income Security Act ("ERISA") claims with greater specificity, but expressly did not rule on whether they could prove standing. By contrast, petitioners in this case failed to demonstrate in response to Mobil's motion for summary judgment that they had standing to sue for a violation of ERISA § 510, 29 U.S.C. § 1140.[2] Finally, the Tenth Circuit decision only addressed ERISA standing and neither ruled on nor even discussed the distinct issue of the relief that courts may provide to those entitled to bring a § 510 action.

Since the decision below raises no important federal question, there is no reason for review by this Court.

COUNTERSTATEMENT OF THE CASE

The issue in this case is whether a class of former Mobil employees—all of whom concede that they retired on or before January 1, 1985 with a lump-sum payment of all their retirement benefits under Mobil's Retirement Plan (the "Plan")—have standing to sue as "participants" under ERISA. ERISA § 3(7) defines a "participant" as "any employee or former employee . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan." 29 U.S.C. § 1002(7). In *Firestone*, this Court held that " '[a] former employee who has neither a reasonable expectation of returning to covered employment nor a colorable claim to vested benefits . . . simply does not fit within the [phrase] "may become eligible." ' " 489 U.S. at 118 (citation omitted). The court of appeals correctly applied that test to deny ERISA

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[2] ERISA § 510 provides that "[i]t shall be unlawful for any person to discharge . . . a participant . . . for exercising any right to which he is entitled under the provisions of an employee benefit plan [or] subchapter [I of ERISA] . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan [or] subchapter [I]."

standing to the petitioners in this case who received all their pension benefits when they retired from Mobil.

A. Factual Background[3]

Mobil provides retirement benefits to its employees through a defined-benefit retirement plan, which promises retirees a pension based on their years of service and salary history with the company. The normal form of pension benefit under the Plan has always been a guaranteed lifetime annuity. [A-2a.]

In 1977, Mobil amended the Plan to add a lump-sum option, which enabled certain retiring employees to receive the actuarial equivalent of their annuity in a single lump-sum payment, discounted to present value based on a 5% interest rate. [A-2a-3a.] To be eligible to elect the lump-sum option, a retiring employee had to have either an accrued lump-sum pension benefit or a net worth (excluding the pension) of at least $250,000. [*Id.*]

To account for the effects of inflation and to prevent the drain on Plan funds resulting from increasing use of the lump-sum option, Mobil amended the Plan on February 9, 1984 and June 13, 1984. The amendments (a) increased the lump-sum interest-rate assumption from 5% to 9.5% for years of service after the amendments became applicable, (b) increased the lump-sum eligibility threshold from $250,000 to $450,000 (the projected equivalent in 1985 dollars of $250,000 in 1977 dollars), and (c) indexed the new eligibility threshold to the Consumer Price Index for future years. [A-3a.] These changes applied to all employees retiring after January 1, 1985.

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[3] The factual background is based on the facts as reflected in the opinions in *Raymond*, *Christopher*, and *Mitchell v. Mobil Oil Corp.*, [A-2a-8a, A-25a-27a, A-50a-52a.] In this and other litigation concerning the same amendments to Mobil's Plan, Mobil has repeatedly denied petitioners' allegations of wrongdoing. In the only fully litigated test of the Plan amendments, the Tenth Circuit found that the amendments were justified. *See Mitchell*, [A-62a-65a]. This Court denied certiorari. 498 U.S. 898 (1990).

[A-26a.] Mobil announced the amendments on July 2, 1984 to provide its employees with a six-month notice or "window" period during which they could continue to exercise the option to retire under the $250,000 threshold. [*Id.*]

Mobil requested a determination from the Internal Revenue Service (the "IRS") that the Plan, as amended, continued to meet the Internal Revenue Code's criteria for favorable tax treatment, including the requirement that tax-qualified plans not "discriminate in favor of highly compensated employees," 26 U.S.C. § 401(a)(4). In late September 1984, the IRS agent reviewing Mobil's application expressed a concern that the amended Plan might in operation result in a pattern of benefits favoring highly compensated employees. [A-3a-4a.]

Mobil did not believe that the new threshold would lead to such a pattern of discrimination in favor of highly compensated employees. Nevertheless, at the agent's suggestion, Mobil submitted an additional amendment stating that Mobil could, if such a pattern of discrimination arose in the future, "in its *sole discretion*, waive [the $450,000 eligibility test] in individual cases for valid cause shown." [A-4a (emphasis added).] This amendment reiterated a power that already existed in the Plan to tailor optional forms of benefits to the circumstances of individual cases.

The IRS issued a favorable determination letter on November 23, 1984. [*Id.*] The letter expressly stated that the Plan had been amended on June 13, 1984.

Mobil announced the IRS approval to its employees on December 21, 1984. [*Id.*] It disseminated the terms of the waiver provision in October 1985, after the window period had ended. [*Id.*][4]

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[4] Petitioners' argumentative statement of facts contains numerous statements that are not supported by the record and are plainly disputed. While petitioners assert [at 8] that Mobil interfered with their right to apply for a pension under the $250,000 threshold after January 1, 1985,

B. The Tenth Circuit's Decision in *Mitchell v. Mobil Oil Corp.*

In 1986, Porter Mitchell, a Mobil employee who had elected to retire during the "window" period with a lump-sum payment of all his benefits, sued Mobil claiming that its 1984 Plan amendments violated both the Age Discrimination in Employment Act ("ADEA") and ERISA. [A-50a.] The district court entered judgments in favor of Mitchell on both his ERISA and ADEA claims. [*Id.*]

The Tenth Circuit reversed. On the ADEA claims, the court found that Mobil had legitimate business reasons for amending its Plan and that there was no evidence that those reasons had been pretexts for age discrimination. [A-62a-66a.]

On the ERISA claims, the court held that Mitchell lacked standing to sue because he was not a "participant." Relying on this Court's decision in *Firestone*, the court held that ERISA's

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there is no evidence that they had any such right. The waiver provision provided no such right because it was, by its express terms, wholly discretionary. *See, e.g., Morales v. Pan American Life Ins. Co.*, 914 F.2d 83, 87-88 (5th Cir. 1990) (participants have no "entitlement" to lump-sum retirement benefit under either plan or ERISA where plan documents give plan administrators discretion in providing lump-sum option).

There is nothing in the record supporting petitioners' contention [at 5] that Mobil would have been required to grant waivers to all its employees and that, therefore, the waiver clause "had the practical effect of negating the $450,000 threshold." Nor, as a matter of law, would any actions Mobil might have taken in order to maintain the tax-qualified status of the Plan have provided petitioners with any Plan or ERISA rights. *See, e.g., Reklau v. Merchants Nat'l Corp.*, 808 F.2d 628, 631 (7th Cir. 1986), *cert. denied*, 481 U.S. 1049 (1987); *Craig v. Bemis Co.*, 517 F.2d 677, 685-86 (5th Cir. 1975).

Similarly, there is no evidence to support the petitioners' claim [at 5-6] that the IRS refused to approve the Plan amendments announced in July or that those amendments were adopted after the July 30, 1984 effective date of the Retirement Equity Act of 1984, *see* Pub. L. No. 98-397, § 302(d)(1), 98 Stat. 1452 (1984). To the contrary, it is undisputed that the IRS issued a favorable determination letter for the Plan as amended on June 13, 1984.

definition of a "participant" includes only " 'former employees who "have . . . a reasonable expectation of returning to covered employment" or "a colorable claim" to vested benefits.' " [A-67a (quoting *Firestone*, 489 U.S. at 117).] The term "participant"

> excludes, however, former employees who have received a lump-sum payment of all their vested benefits because "these erstwhile participants have already received the full extent of their benefits and are no longer eligible to receive future payments." These claimants seek a damage award, not vested benefits improperly withheld.

[A-68a (citation omitted).]

The Tenth Circuit ruled that Mitchell did not meet either prong of the *Firestone* test. He did not have "a colorable claim to vested benefits, but only a claim for compensatory damages" because he had received a lump-sum payment of all his vested and accrued benefits under Mobil's Plan and he did not have "a reasonable expectation of returning to covered employment" because he had "never sought reinstatement." [*Id.*] This Court denied certiorari. 498 U.S. 898 (1990).[5]

C. The Fifth Circuit's Decision in *Christopher v. Mobil Oil Corp.*

After the *Mitchell* verdict, but before the Tenth Circuit reversed, three other former Mobil employees who also had retired during the window period sued Mobil in the United States District Court for the Eastern District of Texas on ADEA and state law claims. *Christopher v. Mobil Oil Corp.*, Civ. No. B-89-0653-CA. The complaint also contained a vague and conclusory ERISA claim that was contingent on preemption of the state-law claims by ERISA. [A-27a.]

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[5] Following remand to the district court and entry of a final judgment, Mitchell unsuccessfully appealed to the Tenth Circuit a second time. 944 F.2d 911 (10th Cir. 1991) (table). This Court again denied certiorari. 112 S. Ct. 1477 (1992).

The Texas district court granted judgment on the pleadings for Mobil on the ERISA claims. The district court also held the state law claims preempted and granted summary judgment on the ADEA claims because they were time-barred. The Fifth Circuit affirmed the dismissal of the ADEA and state law claims, but held that plaintiffs should be given the opportunity to replead their ERISA claims with greater specificity. The court stated that dismissal of the ERISA claims on the pleadings had been "premature" because plaintiffs' "allegations do at least suggest an assertion that they were constructively discharged in violation of section 510 [of ERISA] and that but for Mobil's nondisclosure they would be covered employees with standing to challenge the plan amendment." [A-48a.] The Fifth Circuit "emphasize[d]," however, that it had "not determined that appellants will be able to establish a violation of section 510, only that they should be allowed to attempt to do so." [*Id.*] This Court denied Mobil's petition for a writ of certiorari on the ERISA standing issue. 113 S. Ct. 68 (1992).

D. The Present Class Action: *Raymond v. Mobil Oil Corp.*

Petitioners filed this class action in December 1988, less than three weeks after the *Mitchell* verdict, making the familiar allegations of violations of ADEA, ERISA, and state law.[6] In March 1992, Mobil moved for summary judgment on the ERISA § 510 claims on the ground that, under *Firestone* and *Mitchell*, plaintiffs are not "participants" and therefore have no standing under ERISA. In opposition to the motion, petitioners submitted boilerplate affidavits professing a subjective desire to return to work either at the present time or at the time the lawsuit had been filed, or, in some instances, indicating merely a capacity to return to work. Although the summary judgment

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[6] The ADEA claims are still pending and are currently being reviewed by the Tenth Circuit pursuant to that court's grant of a 28 U.S.C. § 1292(b) appeal to determine whether they are, as Mobil contends, time-barred. The state law claims were dismissed without prejudice and were subsequently asserted in Colorado state court.

record consisted of over 400 pages, no other evidence was submitted concerning petitioners' prospects of returning to covered employment with Mobil.

The district court denied summary judgment but certified its order for immediate appeal under 28 U.S.C. § 1292(b). [A-2a.] The Tenth Circuit reversed. The court rejected petitioners' arguments that, although they had retired in 1984, they should be treated as "current employees" or, alternatively, that their standing should be judged as of the time of the alleged ERISA violation rather than at the time the lawsuit was filed. [A-12a-14a.] As it had in *Mitchell*, the Tenth Circuit held that petitioners do not have standing because they received all their benefits and do not fit within ERISA's definition of a "participant" as authoritatively construed by this Court in *Firestone*. "ERISA's goal of protecting . . . benefits from interference does not transform ERISA's statutory scheme into a federal job protection scheme where those benefits are fully paid out, or create a federal cause of action for wrongful discharge." [A-22a.][7]

ARGUMENT

I. The Tenth Circuit Correctly Applied this Court's *Firestone* Test to the Undisputed Facts of this Case.

The decision below correctly applied this Court's *Firestone* test to the undisputed facts of the case. Such a straightforward application of a recent decision of this Court to the circumstances of a particular case raises no general issue sufficient to warrant this Court's review.

A. The *Firestone* Test.

A person seeking to recover benefits or to enforce statutory rights under Title I of ERISA must sue under the statute's juris-

[7] On remand, the district court entered summary judgment for Mobil pursuant to the mandate of the Tenth Circuit.

dictional provision, ERISA § 502, 29 U.S.C. § 1132. Section 502(a) authorizes only plan "participants," "beneficiaries," "fiduciaries" and the Secretary of Labor to bring civil actions under ERISA. Petitioners here do not contend they have standing as anything other than "participants."

ERISA § 3(7) defines a "participant" as "any employee or former employee . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan." A "participant" therefore must be (*i*) a present or former employee *and* (*ii*) presently or potentially "eligible to receive a benefit" from an employee-benefit plan.

In *Firestone*, former employees brought an ERISA suit alleging that they were entitled as "participants" to receive certain plan information and to sue for damages for the failure to disclose that information. This Court held that "former employees" are "participants" only if they " 'have . . . a reasonable expectation of returning to covered employment' or . . . 'a colorable claim' to vested benefits." 489 U.S. at 117 (quoting *Kuntz v. Reese*, 785 F.2d 1410, 1411 (9th Cir.) (per curiam), *cert. denied*, 479 U.S. 916 (1986)). " 'A former employee who has neither a reasonable expectation of returning to covered employment nor a colorable claim to vested benefits, however, simply does not fit within the [phrase] "may become eligible." ' " *Id.* at 118 (quoting *Saladino v. ILGWU Nat'l Retirement Fund*, 754 F.2d 473, 476 (2d Cir. 1985)).

Based on this construction of ERISA § 3(7), *Firestone* reversed the court of appeals' interpretation of "participant" as " ' "*someone who claims to be* a participant or beneficiary" ' " because this reading "strays far from the statutory language." *Id.* at 117 (emphasis in original) (citation omitted).

> To say that a "participant" is any person who claims to be one begs the question of who *is* a "participant" and renders the definition set forth in [ERISA § 3(7)] superfluous.

Id. (emphasis added).

B. The Tenth Circuit's Application of the *Firestone* Test.

The decision below applied *Firestone* to the undisputed facts of this case to find that plaintiffs are not "participants" with standing to bring an ERISA action. The Tenth Circuit followed its earlier decision in *Mitchell* which this Court has already declined to review.[8]

Petitioners plainly fail to satisfy either aspect of *Firestone*'s test for when former employees qualify as "participants." They do not have a colorable claim to benefits, because, as courts have uniformly held, when an individual retires with a payment of all his or her benefits, their claim is for compensatory damages, not benefits. *See Raymond*, [A-15a]; *Teagardener v. Republic-Franklin Inc. Pension Plan*, 909 F.2d 947, 952, 953 (6th Cir. 1990), *cert. denied*, 498 U.S. 1027 (1991); *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 714 (9th Cir. 1990); *Mitchell*, [A-68a]; *Kuntz*, 785 F.2d at 1411; *Yancy v. American Petrofina, Inc.*, 768 F.2d 707, 708-9 (5th Cir. 1985); *Joseph v. New Orleans Elec. Pension & Retirement Plan*, 754 F.2d 628, 630 (5th Cir.), *cert. denied*, 474 U.S. 1006 (1985).[9]

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[8] The Tenth Circuit's decision is also consistent with the Department of Labor's construction of the statute. A Department of Labor regulation provides that "[a]n individual is not a participant covered under an employee pension plan . . . if [t]he individual has received from the plan a lump-sum distribution or a series of distributions of cash or other property which represents the balance of his or her credit under the plan." 29 C.F.R. § 2510.3-3(d)(2)(ii)(B) (1992). This construction of ERISA is entitled to special deference because the Department of Labor is one of the agencies charged with enforcing that statute. *See Mead Corp. v. Tilley*, 490 U.S. 714, 722, 726 (1989).

[9] An ERISA "benefit" is not an indefinite, unaccrued amount that petitioners might have earned in the future had they continued working, but "an ascertainable amount" allegedly "owed [to plaintiffs] and [that] should have been paid to them *at the time they received their lump sum settlement.*" *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan*, 883 F.2d 345, 350 (5th Cir. 1989) (emphasis added).

They also failed to show, as a matter of fact in response to Mobil's summary judgment motion, that they have a "reasonable expectation of returning to covered employment." Petitioners offered only evidence of their subjective desire or ability to return to such employment. As the Tenth Circuit held, a "reasonable expectation" cannot

> encompass the undisputed situation here, where plaintiffs retired, received all their vested benefits, did not ask their employer for reinstatement and can point to *nothing* suggesting that Mobil will, should or must reinstate them, but instead filed suit seeking reinstatement to commence accruing benefits anew.

[A-19a (emphasis added).]

Petitioners' contention that a plaintiff can withstand a summary judgment motion on ERISA standing merely by alleging an ERISA § 510 violation rather than presenting any evidence of a "reasonable expectation of returning to covered employment" ignores this Court's settled summary judgment rules, *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-25 (1986); Fed. R. Civ. P. 56(e), as well as *Firestone*'s holding concerning the insufficiency of a mere "claim" of participant status, *see* 489 U.S. at 117, and the numerous decisions that have applied *Firestone*'s "reasonable expectation" test, *see Winchester v. Pension Comm. of Michael Reese Health Plan, Inc.*, 765 F. Supp. 424, 425 (N.D. Ill. 1990), *aff'd*, 942 F.2d 1190 (7th Cir. 1991); *Zydel v. Dresser Indus., Inc.*, 764 F. Supp. 277, 280-83 (W.D.N.Y. 1991); *Rhee v. Witco Corp.*, 762 F. Supp. 211, 213 (N.D. Ill. 1991); *Buchanan v. J.R. Foster Elec. Co.*, No. 89 C 4711, 1989 WL 157340, at *2 (N.D. Ill. Dec. 20, 1989); *Deller v. Portland Gen. Elec. Co.*, 727 F. Supp. 1369, 1370 (D. Or. 1989).

For the same reason, there is no conflict with the Fifth Circuit's decision in *Christopher*. In that case, the Fifth Circuit only ruled that the district court's grant of a motion for judgment on the pleadings had been "premature" and that plaintiffs

should have the opportunity to replead their ERISA claims. [A-48a.] It expressly withheld judgment on whether they could establish either ERISA standing or a violation of ERISA § 510. [*Id.*] *Christopher* remains pending and Mobil will vigorously assert that plaintiffs in that action can establish neither ERISA standing nor a violation of § 510.

By contrast, petitioners here had the opportunity to offer any evidence they regarded as relevant to the standing issue and failed to create a triable issue of fact concerning standing. The court of appeals therefore correctly determined that summary judgment should be entered for Mobil.

II. The Tenth Circuit's Decision Is Fully Consistent with ERISA § 510.

Petitioners also argue that this Court should review the decision of the Tenth Circuit because, they claim, it is inconsistent with ERISA § 510. They contend that § 510 provides a private wrongful discharge action for former employees who have retired with all their pension benefits, but who allege that they were discharged to prevent them from continuing to work and accrue additional benefits as part of an employee benefit plan.

Contrary to petitioners' argument [at 14, 17, 22], this is not a "prototypical" § 510 case, such as *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 143 (1990), where an employee was discharged to prevent him from receiving the benefits he had earned. Rather, the employees in this case received *all* the benefits they had accrued, but they contend that ERISA provides them with a right to continue to work to accrue *further* benefits. That argument, however, misconceives the purpose and scope of § 510.

As the Tenth Circuit observed, if petitioners' argument were true, ERISA would supplant the employment-at-will doctrine of the fifty states for any employee covered by a benefit plan. "ERISA's goal of protecting [pension and other] benefits from

interference does not transform ERISA's statutory scheme into a federal job protection scheme where those benefits are fully paid out, or create a federal cause of action for wrongful discharge." [A-22a]; *cf. Rhee*, 762 F. Supp. at 214 n.1 ("if future, unearned benefits were to be deemed 'vested benefits' under ERISA, all individuals fired from jobs with qualified employee benefit plans would arguably have standing to sue under ERISA for future benefits lost because of their discharge").

ERISA, however, was not intended to guarantee workers the right to continue working so as to accrue a larger pension.[10] It was only intended to "ensur[e] that 'if a worker has been promised a defined pension benefit upon retirement—*and if he has fulfilled whatever conditions are required to obtain a vested benefit*—he actually will receive it.' " *Patterson v. Shumate*, 112 S. Ct. 2242, 2250 (1992) (emphasis added) (citation omitted). Once an employee has retired and has been paid all those benefits, ERISA does not give the former employee a right to sue for damages based on years the former employee never actually worked.

> Rather than enabling employees to get "something for nothing"—i.e. to receive present benefits for anticipated future years of employment which have not actually been and may never be worked— . . . the essential purpose of ERISA is to prevent employees from getting "nothing for something"—to prevent them from receiving fewer benefits than those they accrue through years of service.

Blessitt v. Retirement Plan for Employees of Dixie Engine Co., 848 F.2d 1164, 1176 (11th Cir. 1988) (en banc); *accord West v. Greyhound Corp.*, 813 F.2d 951, 955 (9th Cir. 1987) ("an employee has no ERISA right to future, unaccrued benefits").

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[10] Plaintiffs cite several cases [at 13, 25] that have stated that harm to the employment relationship is a *necessary* element of a § 510 claim. Such harm, independent of a deprivation of benefits, is not, and has never been held to be, a *sufficient* element.

"Congress viewed [§ 510] as a crucial part of ERISA because, without it, employers would be able to circumvent the provision of promised *benefits*" by firing employees before they had fulfilled eligibility requirements for the benefits attributable to their years of service. *Ingersoll-Rand*, 498 U.S. at 144 (emphasis added); *see, e.g.*, 2 *Legislative History of the Employee Retirement Income Security Act of 1974*, 94th Cong., 2d Sess. 1774 (1976) ("no vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility"); *accord id.* at 1244, 1758, 1836; *see also West v. Butler*, 621 F.2d 240, 245 (6th Cir. 1980) (describing § 510's legislative history).

Consistent with ERISA's underlying concern for protecting accrued benefits, § 510 itself expressly limits standing by providing that "[t]he provisions of section [502] shall be applicable in the enforcement of this section." *See also Ingersoll-Rand*, 498 U.S. at 143 ("Congress intended § 502(a) to be the *exclusive* remedy for rights guaranteed under ERISA, *including those provided by § 510*") (emphasis added). Section 502(a), in turn, allows only "participant[s]" (and their beneficiaries) to sue and a "participant" is defined as an employee or former employee "who is or may become eligible to receive a *benefit*," ERISA § 3(7) (emphasis added).

Petitioners are simply wrong when they contend [at 18] that this Court's and the Tenth Circuit's construction of the term "participant" "leave[s] all or virtually all former employees who have claims under § 510 with no standing to assert those claims" and [at 13] that the Tenth Circuit "effectively reads out of ERISA the entirety of § 510." Both former employees who have retired with an annuity and those who, like the plaintiff in *Ingersoll-Rand*, have been discharged in order to prevent their accrued benefits from vesting have standing because they have a "colorable claim to vested benefits."[11] In addition, former

[11] *Conkwright v. Westinghouse Elec. Corp.*, 933 F.2d 231 (4th Cir. 1991), which petitioners cite [at 16, 22, 25] is, therefore, irrelevant to the issue posed here. *Conkwright* addressed neither the scope of ERISA

employees who can demonstrate a reasonable expectation of returning to covered employment have standing. Only individuals who, like the petitioners in this case, have received *all* the benefits they have earned and have no reasonable expectation of returning to work have no standing.[12]

This limitation on standing is fully consistent with ERISA's goal of protecting benefits. It protects the actuarial soundness of benefit plans by shielding plans and employers from unpredictable and potentially substantial damages claims by persons without any present or future claim to benefits. It also allows employers to offer early-retirement incentives or to enhance or modify benefits available to participants without the costs and burdens of potential litigation by former employees who have no claim to those new benefits, but merely allege they would not have retired if they had been informed of their future availability.

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standing nor the definition of a "participant" and there is no indication that its plaintiff had retired with a payment of all his benefits, like petitioners here, rather than an annuity.

Petitioners' reliance on *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129 (7th Cir. 1992), [at 13, 22, 25, 26] is similarly misplaced. That case concerned the statute of limitations for a § 510 claim and did not address the issue of standing. The former employee in *Tolle* had brought a suit for benefits, alleging that her employer had discharged her in order to interfere with her right to receive the disability benefits for which she claimed eligibility. She, therefore, clearly fit within the *Firestone* test as applied by the Tenth Circuit because she had a colorable claim to the benefits she had not received.

[12] ERISA also provides both the Secretary of Labor and the Attorney General with broad public authority to enforce the terms of ERISA. *See* ERISA §§ 502(a)(5), 504, 29 U.S.C. §§ 1132(a)(5), 1134 (Secretary of Labor has both investigatory powers and standing to bring certain ERISA civil actions); *see also* ERISA §§ 501, 511, 29 U.S.C. §§ 1131, 1141 (criminal penalties for interference with pension rights). ERISA's legislative history indicates that Congress intended the Secretary of Labor to play a critical role in the enforcement of ERISA § 510. *See* 2 *Legislative History of the Employee Retirement Income Security Act of 1974*, at 1837; 3 *id.* at 4753.

III. ERISA Standing Is Determined at the Time the Lawsuit Is Filed.

Recognizing their failure to establish standing as "participants" at the time their lawsuit was brought, petitioners, in their second question, contend that this Court should grant their petition to determine whether they can establish standing based on their "participant" status at the time of the alleged violation of ERISA. Such a reading of ERISA, however, is at odds with the unambiguous language of the statute, this Court's decision in *Firestone*, and the many cases on ERISA standing.

As a general rule, jurisdiction and standing are determined at the time the lawsuit is brought, not at the time of the events out of which the lawsuit arises. *See Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2141 n.4 (1992). ERISA's jurisdictional provision, § 502, its definition of the term "participant," § 3(7), and its definition of the term "employee," § 3(6), 29 U.S.C. § 1002(6), all depend on a person's present rather than past status. Although "Congress could have phrased [these provisions] in language that looked to the past . . . , it did not choose this readily available option." *Gwaltney v. Chesapeake Bay Found.*, 484 U.S. 49, 57 (1987) (construing Clean Water Act).

Section 502(a), which lists the "[p]ersons empowered to bring a civil action," provides that "[a] civil action may be brought by a participant"—not by someone who was or would have been a "participant." Each subsection of § 502(a), including §502(a)(3), is written in the same present tense. ERISA § 3(7) similarly defines a "participant" as an "employee or former employee . . . who is or may become eligible to receive a benefit"—not who was or might have become eligible for a benefit. And ERISA § 3(6) defines an "employee" as "any individual employed by an employer"—not who was or would have been employed.

Petitioners' interpretation of ERISA's definition of a "participant" is also at odds with this Court's construction of that

term in *Firestone*. This Court did not hold that former employees are "participants" if they can show that they had been eligible to receive a benefit at the time of some alleged past ERISA violation. Rather, it held that "[a] former employee who has neither a reasonable expectation of returning to covered employment nor a colorable claim to vested benefits, however, simply does not fit within the [phrase] 'may become eligible.' " 489 U.S. at 118.

Consistent with *Firestone* and the unambiguous statutory language, lower courts have uniformly held that a plaintiff must be a "participant" at the time a lawsuit is filed in order to sue under ERISA. *See Winchester v. Pension Comm.*, 942 F.2d 1190, 1193-94 (7th Cir. 1991); *Nishimoto*, 903 F.2d at 714; *Yancy*, 768 F.2d at 708; *Werner v. Morgan Equip. Co.*, No. C-92-03930-JPV, 1992 WL 453355, at *2 (N.D. Cal. Aug. 5, 1992); *Rhee*, 762 F. Supp. at 214; *cf. Chemung Canal Trust Co. v. Sovran Bank/Maryland*, 939 F.2d 12, 14-15 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 3014 (1992) (fiduciary status for bringing lawsuit determined as of time of filing); *Blackmar v. Lichtenstein*, 603 F.2d 1306 (8th Cir. 1979) (same); *Framingham Union Hosp., Inc. v. Travelers Ins. Co.*, 721 F. Supp. 1478, 1486 (D. Mass. 1989) (same).[13]

Plaintiffs cite only *Drennan v. General Motors Corp.*, 977 F.2d 246 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 2416 (1993), as being in alleged conflict with *Firestone*, *Raymond*, and the numerous cases in other circuits. As the Tenth Circuit correctly observed [A-14a], however, the *Drennan* plaintiffs were seek-

[13] Numerous other decisions have applied the *Firestone* test at the time of the lawsuit without expressly addressing the issue. *See, e.g., Alexander v. Anheuser-Busch Cos.*, 990 F.2d 536, 539 (10th Cir. 1993); *Sallee v. Rexnord Corp.*, 985 F.2d 927, 928-30 (7th Cir. 1993); *Sanson v. General Motors Corp.*, 966 F.2d 618, 621 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 1578 (1993); *see also Kuntz*, 785 F.2d at 1411; *Saladino*, 754 F.2d at 477. *Kuntz* and *Saladino* were the two cases this Court relied on in formulating the *Firestone* test.

ing benefits they alleged they were eligible for, but had *not* received at the time of the lawsuit. They therefore were indisputably "participants" at the time they brought their lawsuit because, unlike the petitioners in this case, they had a colorable claim for benefits at the time they filed suit.

IV. The Decision Below Does Not Raise the Question Whether Equitable Relief Is Available in ERISA § 510 Actions.

Petitioners also argue that the Tenth Circuit "*[i]n effect* . . . held that § 510 cannot be enforced under § 502(a)(3)(B)" [at 13 (emphasis added)]. In their third proposed question for review, they ask this Court to grant their petition to determine whether former employees alleging a violation of ERISA § 510 may sue only to recover benefits, under ERISA § 502(a)(1), or may recover "appropriate equitable relief" pursuant to § 502(a)(3). However, the only issue before the Tenth Circuit on Mobil's interlocutory appeal was whether petitioners had standing to sue under ERISA, not the relief available if they had standing. [A-70a-71a.] There is nothing in the Tenth Circuit's opinion that decides or even addresses the scope of relief for those who, unlike petitioners, have standing.[14] Thus, that issue is not properly before this Court. *See Patrick v. Burget*, 486 U.S. 94, 99 n.5 (1988); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362 (1981).

[14] Under this Court's recent decision in *Mertens v. Hewitt*, 113 S. Ct. 2063 (1993), such a suit for monetary damages would be barred even if styled as a request for "equitable relief."

CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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July 9, 1993

APPENDIX

APPENDIX

Listing Pursuant to Sup. Ct. R. 29.1 of Mobil Oil Corporation's Parent and of All Non-Wholly-Owned Subsidiaries of Which Mobil Oil Corporation Owns at Least 5% (as of May 12, 1993)

MOBIL CORPORATION (PARENT)
ABRORAY PTY. LIMITED
ABU DHABI PETROLEUM COMPANY LIMITED
ACE POLYMER CO., LTD.
ADRIA WIEN PIPELINE GESMBH
AIMCO (ALPHA) SHIPPING COMPANY
AIMCO (OMEGA) SHIPPING COMPANY LTD.
AIRCRAFT FUEL SUPPLY B.V.
AIRTANKDIENST KOELN
AK CHEMIE GMBH & CO. KG
AKAUMA ASPHALT INDUSTRIES, LTD.
ALEXANDROUPOLIS PETROLEUM INSTALLATION S.A.
ALTONA PETROCHEMICAL COMPANY LIMITED
AMMENN GMBH
ANDREWS OIL PTY. LIMITED
ANKARA GAZ SATIS A.S.
ARABIAN CHEMICAL TERMINALS
ARABIAN INTERNATIONAL MARITIME COMPANY
ARABIAN INTERNATIONAL MARITIME COMPANY LIMITED
ARABIAN TRADING CO. S.A.
ARAL AKTIENGESELLSCHAFT
ATAS ANADOLU TASFIYEHANESI A.S.
ATLAS SAHARA S.A.
AUTOBAHN-BETRIEBE GESELLSCHAFT MBH
AVIATION FUEL SERVICES LIMITED
AYGAZ A.S.
BALGEE OIL PTY. LIMITED
BANGKOK AVIATION FUEL SERVICES LIMITED
BARRORAFT PTY. LTD
BAYERISCHE ERDGASLEITUNG GMBH
BAYERISCHE MINERAL-INDUSTRIE A.G.
BEER GMBH

BEER GMBH & CO. MINERALOEL-VERTRIEBS-KG
BIN SULAIMAN MOBIL TOWERS
BRICKWOOD HOLDINGS PTY. LTD
CANADIAN SUPERIOR OIL (AUST.) PTY. LTD.
CANNER'S STEAM COMPANY, INC.
CANYON REEF CARRIERS, INC.
CAS (COMBINED AUTOMATION SYSTEM) B.V.
CELMISIA SHIPPING CORPORATION
CENTRAL AFRICAN PETROLEUM REFINERIES (PRIVATE) LIMITED
CERCERA S.A.
CHANGI AIRPORT FUEL HYDRANT INSTALLATION PTE. LTD.
CHUBU TORESEN K.K.
COLLINS PIPELINE COMPANY
COLONIAL PIPELINE COMPANY
COMMODORE MARITIME COMPANY S.A.
COMPAGNIE AFRICAINE DE TRANSPORT CAMEROUN (CAT.CN)
COMPAGNIE D'ENTREPOSAGE COMMUNAUTAIRE
COMPAGNIE GENERALE DE LUBRIFICATION
COMPAGNIE SENEGALAISE DES LUBRIFIANTS
COMPANIA DE LUBRICANTES DE CHILE LIMITADA
(COPEC MOBIL LTDA.)
CONSORTIUM RAYMOND DUEZ
COOK INLET PIPE LINE COMPANY
COREDIS
CYPRUS PETROLEUM REFINERY LIMITED
DEPOT PETROLIER DE MOUREPIANE
DEPOT PETROLIER DU GRESIVAUDAN
DEPOTS DE PETROLE COTIERS
DEPOTS PETROLIERS DE LA CORSE (DPLC)
DEUTSCHE PENTOSIN-WERKE GMBH
DEUTSCHE TRANSALPINE OELLEITUNG GMBH
DIXIE PIPELINE COMPANY
DUPONT & DEWULF N.V.
E.M.A. LUBRICANTS COMPANY LIMITED
EAST TEXAS SALT WATER DISPOSAL COMPANY
ENTREPOT PETROLIER DE MULHOUSE
ENTREPOT PETROLIER DE NANCY
ENTREPRISE JEAN LEFEBVRE

ERDGAS-VERKAUFS-GESELLSCHAFT MBH
ERDOEL-RAFFINERIE NEUSTADT GMBH & CO. OHG
ERDOL-LAGERGESELLSCHAFT MBH
ESTACIONES DE SERVICIO ML, S.A.
ETABLISSEMENTS BOUTHENET
ETABLISSEMENTS JOSEPH WALLACH
ETABLISSEMENTS ROHRMANN DUFOSSE
EVANS PETROLEUM (GIPPSLAND) PTY LTD
FAIRWIND MARITIME COMPANY S.A.
FELIX OIL COMPANY
FIBIL S.A.
FILTROS DE COSTA RICA, S.A.
FRUEHMESSER GMBH
FRUEHMESSER MINERALOLHANDELS GMBH & CO. KG
FUSO OPERATIONS KABUSHIKI KAISHA
GATWICK REFUELLING SERVICES LIMITED
GAZAL-GAZ ALETLERI A.S.
GEOMINES-CAEN
GEOVEXIN
GHANA BUNKERING SERVICES LIMITED
HEIZOL-HANDELSGESELLSCHAFT MBH
HELLAS GAS STORAGE CO. S.A.
HIBERNIA MANAGEMENT AND DEVELOPMENT
COMPANY LIMITED
HYDRANTEN-BETRIEBS-GESELLSCHAFT
FLUGHAFEN/FRANKFURT
INDUSTRIA INTERAMERICANA DE FILTROS LTDA. "INTERFIL"
INTOPLANE SERVICES COMPANY LIMITED
IRANIAN OIL PARTICIPANTS LTD.
IRANIAN OIL SERVICES (HOLDINGS) LTD.
IRANIAN OIL SERVICES LIMITED
IRAQ PETROLEUM COMPANY LIMITED
IRAQ PETROLEUM PENSIONS LIMITED
ITALOIL S.R.L.
JAPAN AIRPORT FUELING SERVICE COMPANY, LTD.
JECOP
K.K. SANKYO PLASTICS
K.K. TORESEN

KANSAI PETRO-TERMINAL CO., LTD.
KANTO KYGNUS SEKIYU HAMBAI K.K.
KARL STORZ GMBH & CO. KG
KAWASAKI KYGNUS SEKIYU HAMBAI K.K.
KEIYO SEA-BERTH COMPANY, LTD.
KEMCOR AUSTRALIA PTY. LTD.
KEMCOR ELASTOMERS LTD.
KEMCOR OLEFINS LTD.
KEMCOR PLASTICS PTY. LTD.
KLAUS KOEHN GMBH
KLAUS KOEHN GMBH & CO. MINERALOEL KG
KURT AMMENN GMBH & CO. KG
KYGNUS EKKA GAS KABUSHIKI KAISHA
KYGNUS KOSAN KABUSHIKI KAISHA
KYGNUS MARKETING SERVICE K.K.
KYGNUS SEKIYU KABUSHIKI KAISHA
KYGNUS SEKIYU SEISEI KABUSHIKI KAISHA
KYOKUTO SEKIYU KOGYO KABUSHIKI KAISHA
LA CENTRAFRICAINE DES PETROLES
LILAC SEKIYU K.K.
LIPET-LIKIT PETROL GAZI VE YAKIT TICARET A.S.
LUBLEND LIMITED
LUBRICANTES DEL SUR, S.A.
MARCEAUX & CIE
MATCO TANKERS (U.K.) LIMITED
MID STATE PETROLEUM PTY. LIMITED
MINERALOEL-HANDELS-GESELLSCHAFT MBH
MINERALOELWERK WEDEL GMBH & CO. OHG
MOBIL CATALYSTS CORPORATION OF JAPAN
MOBIL COORDINATION CENTER N.V.
MOBIL DE COLOMBIA S.A.
MOBIL KOREA LUBE OIL, INC.
MOBIL MARKETING BARBADOS COMPANY LIMITED
MOBIL MOTOR REST S.A.
MOBIL OIL - AFOR KERESKEDELMI KFT.
MOBIL OIL BARBADOS LIMITED
MOBIL OIL DE MEXICO, S.A. DE C.V.
MOBIL OIL DJIBOUTI

MOBIL OIL FRANCAISE
MOBIL OIL GABON
MOBIL OIL GHANA LIMITED
MOBIL OIL MAROC
MOBIL OIL NIGERIA PUBLIC LIMITED COMPANY
MOBIL OIL RWANDA BURUNDI
MOBIL PRODUCING CAMEROON INC.
MOBILGAZ MOBIL PETROL GAZLARI A.S.
MOGESTE-GESTAO DE POSTOS DE ABASTECIMENTO LDA.
MOTEL REST S.A.
MT. MARROW BLUE METAL QUARRIES PTY. LIMITED
MULTI TANK CARD B.V.
N.V. ROTTERDAM-RIJN PIJPLEIDING MAATSCHAPPIJ
N.V. SOCONY-STANDARD-VACUUM OIL COMPANY (PETROLEUM MAATSCHAPPIJ)
NAKAJIMA KOSAN KABUSHIKI KAISHA
NEAR EAST DEVELOPMENT CORPORATION
NEW ZEALAND SYNTHETIC FUELS (HOUSING) CORPORATION LIMITED
NEW ZEALAND SYNTHETIC FUELS CORPORATION LIMITED
NICHIEI INDUSTRY CO., LTD.
NICHIMO OIL (BERMUDA) CO., LTD.
NIPPON UNICAR COMPANY, LIMITED
NORDDEUTSCHE ERDGAS-AUFBEREITUNGS-GESELLSCHAFT MBH
NORVAC PTY. LIMITED
OCTAGON PTY. LTD.
OLDENBURGISCHE ERDOEL GESELLSCHAFT MBH
OSAKA KYGNUS K.K.
OVENS & MURRAY PETROLEUM PTY. LTD.
P.T. ARUN NATURAL GAS LIQUEFACTION COMPANY
P.T. STANVAC INDONESIA
PALOMA PIPE LINE COMPANY
PARS INVESTMENT CORPORATION (PRIVATE COMPANY)
PAUL HARLING MINERALOEL GMBH & CO. KG
PERKAL PTY. LIMITED
PETROCAB
PETROCAM PTY. LIMITED

PETROGAS PROCESSING LTD.
PETROLEUM SERVICES (MIDDLE EAST) LIMITED
PETROMIN LUBRICATING OIL COMPANY
PETROMIN LUBRICATING OIL REFINING COMPANY
PETROMIN-MOBIL YANBU REFINERY COMPANY LTD.
PIONEER KOSAN K.K.
PLEGADIZOS PARA LA INDUSTRIA, S.A.
PRESNALL PTY. LIMITED
PROGAS LIMITED
PROVIDANGE
P6-GROEP B.V.
R. SHERWOOD LIMITED
RAINBOW PIPE LINE COMPANY LTD.
RED SEA PLASTIC FACTORY COMPANY LIMITED
REGULUS HOLDING (SINGAPORE) PTE. LTD.
REITBERGER MINERALOELE GMBH & CO. KG
RHODES PETROLEUM INSTALLATION S.A.
RÖHOL-AUFSUCHUNGS GESELLSCHAFT MBH
RUHRGAS AKTIENGESELLSCHAFT
RUNDEL MINERALOELVERTRIEB GMBH
S.C. BRUSSELS AIRFUELS SERVICES C.V.
SABA-SOCIEDADE ABASTECEDORA DE AERONAVES LDA.
SARL ETABLISSEMENTS MICHEL FAURE
SAUDI MARITIME COMPANY LTD.
SAUDI YANBU PETROCHEMICAL CO.
SAWYER PETROLEUM PTY. LTD
SCHUBERT KOMMANDITGESELLSCHAFT
SEGHER DE MEXICO, S.A. DE C.V.
SIERRA LEONE PETROLEUM REFINING COMPANY LIMITED
SIGEL INCORPORATED
SOCIETA' ITALIANA PER L'OLEODOTTO TRANSALPINO - SIOT S.P.A.
SOCIETE "LES FILS DE FERRERO"
SOCIETE AFRICAINE DE RAFFINAGE (S.A.R.)
SOCIETE ANONYME DE GESTION DES STOCKS DE SECURITE
SOCIETE BELGE DE TRANSPORT PAR PIPELINE S.A.
SOCIETE CAMEROUNAISE DE DEPOTS PETROLIERS (S.C.D.P.)
SOCIETE COLMARIENNE DE DISTRIBUTION DE PRODUITS PETROLIERS

SOCIETE COMBUSTIBLES DE PROVENCE
SOCIETE D'ENTREPOSAGE DE GABES
SOCIETE D'ENTREPOSAGE DE SAN PEDRO
SOCIETE D'ENTREPOSAGE PETROLIER AU BURUNDI (SEP BURUNDI)
SOCIETE DE CONSTRUCTION & DE GESTION CB.12
SOCIETE DE GESTION DE DEPOTS D'HYDROCARBURES
SOCIETE DE GESTION DES STOCKS PETROLIERS DE COTE D'IVOIRE (GESTOCI)
SOCIETE DE MANUTENTION CARBURANTS AVIATION DE TAHITI (SOMCAT)
SOCIETE DE MANUTENTION DE CARBURANTS AVIATION (S.M.C.A.)
SOCIETE DE MANUTENTION DE CARBURANTS AVIATION DAKAR-OFF
SOCIETE GABONAISE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE GABONAISE DE RAFFINAGE
SOCIETE IVOIRIENNE DE FABRICATION DE LUBRIFIANTS (S.I.F.A.L.)
SOCIETE IVOIRIENNE DE RAFFINAGE
SOCIETE MALIENNE D'ENTREPOSAGE (S.M.E.)
SOCIETE MAURITANIENNE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE NATIONALE DE RAFFINAGE
SOCIETE PIZO DE FORMULATION DE LUBRIFIANTS
SOCIETE STATION-SERVICE LUNES
SOCIETE TAHITIENNE DE DEPOTS PETROLIERS
SOCIETE TAHITIENNE DES OLEODUCS (STDO)
SOCIETE TCHADIENNE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE TOGOLAISE D'ENTREPOSAGE
SOCIETE WALLISIENNE ET FUTUNIENNE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE ZAIROISE D'EMBALLAGE
SOUTH SASKATCHEWAN PIPE LINE COMPANY
STATFJORD TRANSPORT A.S.
STE CAMEROUNAISE EQUATORIALE DE FABRICATION DE LUBRIFIANTS (S.C.E.F.L.)

STE DES BITUMES & CUT-BACKS DU CAMEROUN (S.B.C.B.C.)
STRASBURGER ENTERPRISES (PROPERTIES) PTY. LIMITED
SUN EAST COMPANY LIMITED
SUNDERLAND OIL STORAGE LIMITED
SUPERIOR DISK CORPORATION
SYDNEY METROPOLITAN PIPELINE PTY. LIMITED
T&M TERMINAL COMPANY
TANKBAU-GMBH
TANKLAGERGESELLSCHAFT KOELN-BONN
TAR TANKANLAGE RUEMLANG A.G.
TCA PLASTICS, INC.
TECKLENBURG GMBH
TECKLENBURG GMBH & CO. ENERGIEBEDARF KG
TEMA LUBE OIL COMPANY LIMITED
TGF TANKDIENST-GESELLSCHAFT FRANKFURT
THAILAND SOLVENT PRODUCTS LIMITED
THE ARABIAN ENERGY COMPANY LIMITED
THE ARABIAN PETROLEUM SUPPLY CO. (S.A.)
THE NEW ZEALAND REFINING COMPANY LIMITED
THE SAUDI CAN COMPANY LTD.
TOHPREN CO., LTD.
TOKUSHIMA SEKIYU KABUSHIKI KAISHA
TONEN CHEMICAL CORPORATION
TONEN CORPORATION
TONEN ENERGY AND MARINE (SINGAPORE) PTE. LTD.
TONEN ENERGY INTERNATIONAL CORPORATION
TONEN FILARE CO., LTD.
TONEN FILM CO., LTD.
TONEN PROPERTIES INC.
TONEN SOGO SERVICE CO., LTD.
TONEN SYSTEM PLAZA INC.
TONEN SYSTEM SERVICE INC.
TONEN TANKER KABUSHIKI KAISHA
TONEN TAPYRUS COMPANY LIMITED
TONEN TECHNOLOGY KABUSHIKI KAISHA
TONEX COMPANY LIMITED
TOWA COMPOUNDING COMPANY, LIMITED
TOYOSHINA FILM COMPANY, LIMITED

TRADEWIND MARITIME CO. S.A.
TRANSALPINE OELLEITUNG IN OESTERREICH GESELLSCHAFT M.B.H.
TRESKOME PTY. LIMITED
TRYICE PTY. LIMITED
TULLIA 89 S.R.L.
TWIFO OIL PALM PLANTATIONS LIMITED
UBAG UNTERFLUR-BETANKUNGSANLAGE AG
UNITED KINGDOM OIL PIPELINES LIMITED
W.A.G. PIPELINE PTY. LIMITED
WAITOMO/BRENAN PETROLEUM LIMITED W/BP
WAKO JUSHI KABUSHIKI KAISHA
WALTON-GATWICK PIPELINE COMPANY LIMITED
WERNER WEIDEMANN MINERALOELVERTRIEB GMBH
WEST LONDON PIPELINE AND STORAGE LIMITED
WEST SHORE PIPE LINE COMPANY
WIRI OIL SERVICES LIMITED
WOLVERINE PIPE LINE COMPANY
WYMONDHAM OIL STORAGE CO. LIMITED
ZAIRE MOBIL OIL S.A.R.L.
ZAIRE S.E.P.